**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH**

C.R.No. 3041 of 2005

DATE OF ORDER:

Manohar Lal

...Petitioner(s)

Versus

Mohinder Singh and Others

....Respondent(s)

**CORUM : HON'BLE MR. JUSTICE M.M. AGGARWAL**

**.*.*.*.**

Present: Mr. Arun Bakshi, Advocate.

**M.M. AGGARWAL,J**

This is petition filed by Manohar Lal tenant against order dated 8.4.2005 passed by Rent Controller, Jalandhar whereby request of the tenant for leave to contest was denied.

The facts of the case are that Mohinder Singh and Surender Kaur respondents as NRI-landlords had filed petition under Section 13-B of the East Punjab Urban Rent Restriction (Amendment) Act, 2001 for ejectment of Manohar Lal from H.No.WX 101, Basti Nau, Jalandhar. This house was actually owned by Jagat Singh, their father, who had died in the year 1995. Mohinder Singh and Surender Kaur pleaded that they have become owners by operation of law as there was no other legal heir.

According to the petitioners, they are non-resident Indians based in England, where they are gainfully employed but they are of Indian Original and belong to village Jaura, Tehsil Dasuya, District Hoshiarpur. Surender Kaur had recently come to India on 20.2.2003 and went back to England whereas petitioner Mohinder Singh is in India for filing the petition. Petitioners have come to India and required the demised premises for their own use and occupation. They have no other residential house.

Tenant had filed an application for permission to defend, which was declined and ejectment order was passed.

Counsel for the petitioner-tenant has argued that there is no evidence that the landlords have come permanently to India, to settle.

On behalf of the landlords, their passports had been produced showing that they had been coming and staying in India.

In a judgment of Hon'ble Supreme Court reported in Baldev Singh Bajwa v. Monish Saini, 2005(2) RCR, 470, it had been held that the tenant would be entitled to leave to contest only if he makes a strong case to able to show:

i) Landlord is not NRI landlord.

ii) Landlord is not owner of premises.

iii) Landlord is not owner for last 5 years before institution of proceedings.

iv) Landlord's requirement is not bona fide and is a pretext to get accommodation vacated.

In this case, there is no dispute that the landlords are NRIs and they are owner, of the premises for the last five years before institution of proceedings. It had not been shown anywhere that requirement of the landlord was not bona fide and was a pretext to get accommodation vacated. Sub Section 3 of Section 13-B of the Act provides that the owner will not transfer the property to anybody through sale or any other person or rent out before the expiry of five years of taking possession. This is safeguard provided against frivolous application.

In para No.26 of Baldev Singh Bajwa's case(supra), the Hon'ble Supreme Court observed as under:

> "On the interpretation given by us and on a plain reading of the provisions, once in a life-time possession is given to a NRI to get one building vacated in a summary manner. A Non-resident Indian landlord is required to prove that:-(1) he is a NRI; (ii) that he has returned to India permanently or for the temporary period; (iii) requirement of the accommodation by him or his dependent is genuine; and (iv) he is the owner of the property for the last five years before the institution of the proceedings for ejectment before the Controller. The tenant's affidavit asking for leave to contest the NRI landlord's application should confine to the grounds which NRI landlord is required

to prove, to get ejectment under Section 13-B of the Act. The Controller's power to give leave to contest the application filed under Section 13-B circumscribe to the grounds and inquiry to the aspects specified in the Section 13-B. The tenant would be entitled for leave to contest only if he makes a strong case to challenge those grounds. Inquiry would be confined to Section 13-B and no other aspect shall be considered by the Controller."

In this case, tenant-petitioner had not made out a strong case to challenge the grounds and as such the Rent Controller was perfectly justified in not granting permission to contest and had declined application and passed ejectment order.

There is no merit in the petition and the same is dismissed.

February , 2007 ( M.M. AGGARWAL )
manoj JUDGE